

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

INTERNATIONAL UNION OF
BRICKLAYERS AND ALLIED
CRAFTWORKERS, LOCAL NO. 3 et al.,

Plaintiffs,

v.

MARK PEPE and
ALPHA MASONRY CONSTRUCTION CO., INC.,

Defendants.

**REPORT AND
RECOMMENDATION**

14-CV-267A

Plaintiffs, a labor union and trustees of various pension funds, filed a complaint on April 11, 2014 (Dkt. No. 1) accusing defendants of underfunding those pension funds. According to plaintiffs, the underfunding constitutes a violation of the collective-bargaining agreement between the union and the corporate defendant, as well as the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001–1461 and scattered sections of 26 U.S.C., and the Labor-Management Relations Act of 1947 ("LMRA"), 29 U.S.C. §§ 141–187.

Neither defendant ever appeared. At plaintiffs' request (Dkt. No. 6), the Clerk of the Court issued an entry of default against both defendants. (Dkt. No. 7.) On June 2, 2014, plaintiffs filed a motion for default judgment seeking damages comprising unpaid funds, liquidated damages as permitted under the collective-bargaining agreement, and attorney fees. Following an order from this Court requiring itemization of damages and fees (Dkt. No. 10), plaintiffs filed an

itemization on August 7, 2014. (Dkt. No. 13.) The itemization sets forth a grand total of \$216,830.24 in damages and attorney fees. The Court held oral argument on August 13, 2014, at which plaintiffs clarified that the recent itemization represents the most accurate estimate of damages and fees.

The Court now has reviewed all of the exhibits that plaintiffs have filed along with the itemization that summarizes those exhibits. After reviewing the exhibits and hearing from plaintiffs in oral argument, the Court finds that the proposed grand total in the itemization is both sufficiently documented and reasonable, for the reasons that plaintiffs have submitted. Accordingly, the Court respectfully recommends granting plaintiffs' motion (Dkt. No. 8) and entering default judgment in the amount of \$203,890.06 for damages, and \$12,940.18 in attorney fees, for a grand total of \$216,830.24.

Any objections to this Report and Recommendation must be electronically filed with the Clerk of the Court within 14 days. See 28 U.S.C. § 636(b)(1); FRCP 72. "As a rule, a party's failure to object to any purported error or omission in a magistrate judge's report waives further judicial review of the point." *Cephas v. Nash*, 328 F.3d 98, 107 (2d Cir. 2003) (citations omitted).

SO ORDERED.

/s/ Hugh B. Scott
HONORABLE HUGH B. SCOTT
UNITED STATES MAGISTRATE JUDGE

DATED: August 13, 2014